

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2015-16ST
March 2, 2016

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ISSUES

Sales and Use Tax - Exemptions Applicable to Sales of Medical Supplies and Devices

Authority: [IC 6-2.5-1-25](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-5-18](#); [45 IAC 2.2-5-27](#); Sales Tax Information Bulletin #48 (September 2015)

A company ("Taxpayer") is seeking a determination regarding whether its medical product is a device or piece of equipment that is exempt from Indiana gross retail and use tax.

STATEMENT OF FACTS

Taxpayer is a California corporation that has developed a device (the "Product") to address chronic sinusitis. Taxpayer describes the Product further as follows:

Our product, a spring-like steroid-releasing implant that offers localized drug delivery directly to the sinus tissue, is inserted by a physician to maintain the surgical opening, expands to prop open the ethmoid sinus and gradually delivers corticosteroid with anti-inflammatory properties directly to the sinus lining as the implant dissolves. The implant is sold in a bundle with a delivery system, a type of medical tool or procedure kit that is labeled to be dispensed only by the prescription or order of a licensed practitioner, and is intended for one-time use on a single patient only. One cannot purchase or use the implant without a delivery system, as they are simply two integral parts of ONE product. We now sell to hospitals, ambulatory surgery centers, and doctor office[s] for scheduled surgeries and for inventory stocking.

DISCUSSION

Taxpayer requests that the Department rule whether the Product is a device or piece of equipment that it is exempt from Indiana gross retail and use tax pursuant to [IC 6-2.5-5-18](#). As Taxpayer describes:

[45 IAC 2.2-5-27](#) and [45 IAC 2.2-5-2\[8\]](#) discuss exemption on certain medical equipment, but there is no explicit ruling on a similar bundle[d] product like ours. Thus, we wonder if our product falls under any of the categories and we are requesting an official ruling from you regarding taxability of our product in Indiana.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." [IC 6-2.5-3-2\(a\)](#).

In general, all purchases of tangible personal property are subject to sales and/or use tax unless an enumerated exemption from sales and/or use tax is available. [IC 6-2.5-5-18\(c\)](#) provides in pertinent part:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) that is required by law for the transaction from a licensed practitioner:

(1) Durable medical equipment (including a repair or a replacement part).

...

(3) Prosthetic devices, including artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, and contact lenses (and including a repair or a replacement part).

(4) Other medical supplies or devices that are used exclusively for medical treatment of a medically

diagnosed condition, including a medically diagnosed condition due to:

- (A) injury;
- (B) bodily dysfunction; or
- (C) surgery.

"Durable medical equipment" is defined in [IC 6-2.5-1-18](#), which provides:

(a) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;
- (3) generally is not useful to a person in the absence of illness or injury; and
- (4) is not worn in or on the body.

The term does not include mobility enhancing equipment.

(b) As used in this section, "repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

The term "prosthetic device" is defined in [IC 6-2.5-1-25](#) as:

[A] replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

- (1) artificially replace a missing part of the body;
- (2) prevent or correct physical deformity or malfunction; or
- (3) support a weak or deformed part of the body.

Analyzing the Product in the context of the plain meaning in [IC 6-2.5-1-18](#) and 25, the Product would not be considered "durable medical equipment," because it is worn in the body and cannot withstand repeated use. Conversely, the Product would not be considered a "prosthetic device," because while part of the Product is worn in the body, the part that is a kit for surgically inserting the rest of the Product would not meet that definition. Further, the part of the Product that is worn within the body does not correct a physical malfunction, but props the nasal passage open for a period of thirty days before it dissolves, and releases a localized steroid during that period.

With that being said, the Product would fall under the category of "other medical supplies or devices" found in [IC 6-2.5-5-18\(c\)\(4\)](#). [45 IAC 2.2-5-28](#) expands on this exemption, providing in relevant part:

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body.

The Department's Sales Tax Information Bulletin #48 ("STIB 48") further clarifies the exemption for "other medical supplies and devices," as it applies to purchases made by patients pursuant to a prescription by a licensed practitioner:

The following sales and/or rental of durable medical equipment, devices, drugs, and other supplies are exempt from Indiana sales and use tax provided the end user patient acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) that is required by law (if such property requires a prescription or drug order by law, subject to the conditions set out below) for the transaction from a licensed practitioner:

...

- Other medical supplies or devices used exclusively for medical treatment of a medically diagnosed condition due to injury, bodily dysfunction, or surgery. The phrase "used exclusively" means the intended usage of the device by the manufacturer, not the use made of the device by the purchaser. Therefore, items such as hot tubs, beds, mattresses, and other items that have general usage would typically not be exempt. However, if modifications are made to such items for medical treatment described in this bullet point, the department may exempt such tangible personal property used in modifying such device, but not the device itself

Even as a bundled item, all aspects of the Product would meet the requirements under [IC 6-2.5-5-18\(c\)\(4\)](#) and [45](#)

[IAC 2.2-5-28](#). However, in order for the Product to be exempt under [IC 6-2.5-5-18](#), the Product must be sold or rented to an end user purchaser pursuant to a valid prescription or drug order. Implicit in that requirement is the necessity that the item be transferred for consideration to a purchaser who possesses a prescription for the item. [45 IAC 2.2-5-27](#) clarifies the definition of "prescribed" as follows:

- (a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.
- (b) Definition: The term "prescribed" shall mean the issuance by a person described in [subsection (a)] of a certification in writing that the use of the medical equipment[,] supplies[,] and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.

When sold to "hospitals, ambulatory surgery centers, and doctor office[s]," the Product is not sold to an end user purchaser who possesses a prescription for the item and, therefore, such a transaction is not exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-18](#). Taxpayer has not established that the Product is sold to patients, or that patients pay for it themselves or through their insurance. Therefore, the Product is not exempt under [IC 6-2.5-5-18](#) if it is not sold directly to the end user patient by Taxpayer or a licensed practitioner. However, the product may be exempt under [IC 6-2.5-5-8\(b\)](#), which provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

If Taxpayer sells the Product to a hospital, ambulatory surgery center, or doctor office, and the Product is subsequently sold to an end user patient, then the Product would be exempt from tax when sold to the doctor or hospital under [IC 6-2.5-5-8\(b\)](#). The Taxpayer shall require the hospital, ambulatory surgery center, or doctor office purchasing the Product to provide a valid exemption certificate (Form ST-105) at the time of purchase in order to qualify for this sale for resale exemption.

RULING

Because Taxpayer's Product is not sold or rented to a patient end user by a licensed practitioner pursuant to a prescription, the Product is not exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-18](#). However, it may be exempt under [IC 6-2.5-5-8\(b\)](#) as a sale for resale.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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